

Supreme Court of Kentucky

IN RE:
ORDER AMENDING
RULES OF THE SUPREME COURT (SCR)

2003-4

The following rules' amendments shall become effective January 1, 2004.

AMENDMENTS TO THE RULES OF THE SUPREME COURT

1. SCR 2.015(2)

Section (2) of SCR 2.015 shall read:

- (2) No person shall sit for the Bar Examinations administered under SCR 2.080, 3.500 or 3.510 unless he or she has first passed the Multi-State Professional Responsibility Examination administered by the National Conference of Bar Examiners by attaining a scaled score thereon of at least 75.

2. SCR 2.042(4)

A new section (4) of SCR 2.042 shall read:

- (4) Any member whose license is revoked by the Court for failure to comply with the terms of a conditional admission agreement shall be deemed to have been subject to a disciplinary action and restoration or reinstatement shall be subject to the rules set forth in SCR 3.510.

3. SCR 2.110(3)

Section (3) of SCR 2.110 shall read:

- (3) Admission under this Rule shall be conditioned on the applicant establishing that the district or state from which the applicant applies and in which the applicant performs the major portion of his or her professional activities has rules or other provisions providing for admission without examination and by reciprocity or comity which are no more restrictive than the rules of this Commonwealth.

4. SCR 2.111 (5)

Section (5) of SCR 2.111 shall read:

The performance of legal services in this Commonwealth solely for such attorney's employer, its parent, subsidiary, or affiliated entities, following admission to the Kentucky Bar on a limited certificate shall be considered to be the active engagement in the practice of law for all purposes.

5. SCR 3.010 General Definitions

SCR 3.010 shall read:

As used throughout this Rule 3, the following definitions shall apply unless the context clearly requires a different meaning:

"Association" is the Kentucky Bar Association.

"Attorney" is a person licensed or authorized to practice law.

"Board" is the board of governors of the association.

"Bylaws" means the bylaws of the association.

"Chairman" means the chairman of the house of delegates.

"Chairman-elect" means the chairman-elect of the house of delegates.

"Charge" means the pleading by which the association charges an attorney with unprofessional conduct.

"Circuit clerk" is the clerk of the court of respondent's present or last known residence.

"Clerk" is the clerk of the Supreme Court of Kentucky.

"Committee" means the committee on character and fitness defined in Rule 2.040.

"Complainant" means the party who causes to be initiated an investigation of an attorney, or who causes to be initiated a proceeding under Rule 3.160. The complainant may be a person or entity.

"Court" is the Supreme Court of Kentucky.

"Delegate" is a member of the house of delegates of the association.

"Director" is the director of the association.

"District" means a prescribed geographical and political area of the state.

"Governor" is an elected member of the board.

"House" means the house of delegates of the association.

"Law student" means any person enrolled in an approved law school who has successfully completed the first year therein.

"Member" means an attorney in good standing as required by the rules of the court.

"Officer" means a member elected or appointed pursuant to the rules.

"President" is the president of the association.

"President-elect" is the president-elect of the association.

"Registrar" is the registrar of the association.

"Respondent" is an attorney against whom a charge is filed.

"Rules" are the rules of the court.

"Section" means a body of members actively interested in and promoting improvements in a particular branch of law.

"Time" is computed as under the Rules of Civil Procedure.

"Treasurer" is the treasurer of the association.

"Trial commissioner" means the commissioner appointed pursuant to the provisions of Rule 3.230 and other rules governing disciplinary procedures.

"Vice-chairman" is the vice-chairman of the house of delegates.

"Vice-president" is the vice-president of the association.

6. SCR 3.050 COLLECTION OF DUES; SUSPENSION
FOR NONPAYMENT

SCR 3.050 shall read:

On or before September 15 of each year, the Treasurer shall notify a member in writing of his or her delinquency and an additional late payment fee of fifty dollars shall be assessed. On or before October 15 of each year, the Treasurer shall in writing certify to the Court the names of all members who remain delinquent. The Clerk shall docket the matter and the Court shall issue to such members a rule requiring each to show cause why he or she should not be suspended from the practice of law. The member shall file a response with the Clerk within twenty days of the date of the entry of the show cause order, and shall serve a copy on the Director, in addition to making the required payment of the delinquent dues and the late payment fee paid to the Association. The Association shall be permitted to file a reply within ten days after the filing of a response by a member. Unless good cause is shown by the return date of the rule or within such additional time as maybe allowed by the Court, an order shall be entered suspending respondent from the practice of law. An attested copy of the order shall be delivered by the Clerk to the member, the Director, and the Circuit Clerk of the member's residential district for recording and indexing. The suspended member may apply for reinstatement to membership under the provisions of SCR 3.500.

7. SCR 3.166(1) Automatic Suspension After Conviction of a Felony

Section (1) of SCR 3.166 shall read:

- (1) Any member of the Kentucky Bar Association who pleads guilty to, or is convicted by a judge or jury of, a felony in this State or in any other jurisdiction shall be automatically suspended from the practice of law in this Commonwealth. "Felony" means an offense for which a sentence to a term of imprisonment of at least one (1) year was imposed. The imposition of probation or parole or any other type of discharge prior to the

service of sentence, if one is imposed, shall not affect the automatic suspension. The suspension shall take effect automatically beginning on the day following the plea of guilty or finding of guilt by a judge or jury or upon the entry of judgment whichever occurs first. The suspension under this rule shall remain in effect until dissolved or superseded by order of the Court. Within thirty (30) days of the plea of guilty or finding of guilt by a judge or jury or entry of judgment whichever occurs first, the suspended attorney may file a motion with the Clerk of the Supreme Court of Kentucky setting forth any grounds which the attorney believes justify dissolution or modification of the suspension.

8. SCR 3.175 EFFICIENT ENFORCEMENT; NOTICE OF
ATTORNEY'S ADDRESS

SCR 3.175 shall read:

- (1) In order to facilitate the efficient enforcement of the Kentucky Rules of Professional Conduct, the rules of the Continuing Legal Education Commission, the dues obligations of attorneys, and such other communications of importance to the profession as the Supreme Court may consider appropriate, each attorney licensed by the Supreme Court to practice law in this Commonwealth shall:
 - (a) maintain with the Director of the Association a current address at which he or she may be communicated with by mail, the said address to be known as the member's Bar Roster address, and shall upon a change of that address notify the Director within thirty (30) days of the new address; and
 - (b) include his or her five (5) digit member identification number in all communications to the Association including, but not limited to, any and all communications relating to his or her membership status, membership record, dues obligations, compliance with continuing legal education requirements or disciplinary proceedings in which he or she is a respondent.
- (2) After July 1, 2004, every member of the Association shall be deemed to have appointed the Director as that member's agent for service of any document that is required to be served upon that member by any provision of Supreme Court Rule 2 or 3, provided that service of a document upon the Director shall constitute constructive service of that document upon the member only upon proof that all of the following requirements have been satisfied:

- (a) Reasonable efforts have been made to achieve actual service of the document upon the member;
 - (b) Two (2) true copies of the document have been provided to the Director, accompanied by a written request that the Director serve the document upon the member at the member's current Bar Roster address;
 - (c) Within seven (7) days after receipt of such request, the Director mailed one (1) copy of the document to the member at the aforesaid address, posted by certified mail, return receipt requested, restricted delivery - addressee only, in an envelope bearing the return address of the Director and marked on the outside as "OFFICIAL COMMUNICATION – IMMEDIATE ATTENTION REQUIRED"; and
 - (d) No less than thirty (30) days after mailing the document pursuant to subparagraph (c), the Director shall enter a Return of Service which attests:
 - (i) that the Director mailed one of the copies of the document mentioned in subparagraph (b) to the member's Bar Roster address in accordance with the requirements of subparagraph (c);
 - (ii) that the Director has attached to the Return of Service all communications received in response to the service or attempted service of the document, including any certified mail receipt or other postal notice or return receipt relating to the delivery or attempted delivery of the document and any communication from the member of the Association or other person acting on behalf of such member; and
 - (iii) that the Director has provided a true copy of the Return of Service, with copies of all attachments, to the person or entity who requested service of the document upon the member of the Association.
- (3) After July 1, 2004, the Association may reject any communication to the Association which fails to comply with paragraph (1) (b) of this Rule 3.175, provided that a member's failure to include his or her member identification number in a document shall not result in a default in any disciplinary proceeding.

9. SCR 3.370(6) Procedure Before the Board and the Court

Section (6) of SCR 3.370 shall read:

- (6) The Board shall decide, by a roll call vote, whether the decision of the Trial Commissioner as to the finding of a violation and degree of discipline imposed is supported by substantial evidence or is clearly erroneous as a matter of law. The Board, in its discretion, may conduct a review *de novo* of the evidence presented to the Trial Commissioner. Both the findings and any disciplinary action must be agreed upon by eleven (11) or three-fourths (3/4) of the members of the Board present and voting on the proceedings, whichever is less. The result of each of the two (2) votes shall be recorded in the Board's minutes and in a written decision of the Board setting forth the reasons therefore as stated in paragraph seven (7) of this rule. The President shall sign and file with the Disciplinary Clerk an order setting forth the action and decision of the Board. The Disciplinary Clerk shall mail copies of such order and decision, together with a copy of the Trial Commissioner's report, to the Respondent and his/her counsel, and to each member of the Inquiry Commission, and shall place ten (10) copies in the file. The Board by a vote of a majority of the Board present and voting, may remand the case to the Inquiry Commission for reconsideration of the form of the charge, remand the case to the Trial Commissioner for clarification of the Trial Commissioner's report, or for an evidentiary hearing on points specified in the order of remand. The Board may order the parties to file additional briefs on specific issues.

10. SCR 3.500

Section (3) of SCR 3.500 shall read:

- (3) If the Committee recommends approval of the application and the Board concurs, then the application shall be referred to the Board of Bar Examiners, which Board shall administer a written examination which shall cover the subject of ethics and five (5) of the subjects listed in SCR 2.080(1). Each of these subjects must be passed by the Applicant, and not averaged or combined with each other, or with the score obtained on the examination required by Rule 2.015. The fees required by Rules 2.022 and 2.023 shall be paid prior to taking the examination.

If an Applicant passes an examination, such fact shall be certified to the Court together with a recommendation that the Applicant be readmitted to membership. If the Applicant fails to pass an examination, the Board of Bar Examiners shall certify the fact of failure to the Association and the Court for entry of an order denying the Applicant for

reinstatement.

The provisions of Rules 2.015 and 2.080 shall apply where not inconsistent.

11. SCR 3.505(3)

Section (3) of SCR 3.505 shall read:

- (3) The Applicant or Bar Counsel shall have the right to a hearing before the Character and Fitness Committee prior to the issuance of its decision. The hearing shall be held within sixty (60) days from the request. The report of the Committee shall be filed within sixty (60) days of receipt of the transcript of hearing.

12. SCR 3.510(5)

Section (5) of SCR 3.510 shall read:

- (5) A suspended member of the Association who desires to resume practice as quickly as possible following a period of suspension may file an application to do so at any time during the last ninety (90) days of the period of suspension.

13. SCR 3.600 Continuing Legal Education Definitions

New rule SCR 3.600 shall read:

As used in SCR 3.610-3.690, the following definitions shall apply unless the context clearly requires a different meaning:

“Approved activity” is a continuing legal education activity that has been approved for credit by the CLE Commission.

“Attorney Identification Number” is the five (5) digit number assigned to each member of the Association upon admission.

“Award” is the Continuing Legal Education Award.

“Commission” is the continuing legal education commission.”

“Continuing legal education,” or “CLE,” is any legal educational activity or program which is designed to maintain or improve the professional competency of the practicing attorneys and is accredited by the Commission.

“Credit” is a unit for measuring continuing legal education activity.

“Educational year” is the reporting period for mandatory continuing legal education and runs from July 1st each year through June 30th of the successive year.

“In-house activity” is an activity sponsored by a single law firm, single corporate law department, or single governmental office for lawyers who are members or employees of the firm, department or office.

“Legal writing” is a publication which contributes to the legal competency of the applicant or other attorneys or judges and is approved by the Commission. Writing for which the author is paid shall not be approved.

“Non-compliance” means not meeting continuing legal education requirements set forth in Rule 3.661 and Rule 3.652 and includes both lack of certification and lack of completion of activities prior to established time requirements.

“Technological transmission” is a CLE activity delivery method other than live seminars and includes video tape, audio tape, live broadcast transmission, satellite simulcast, teleconference, video conference, CD-ROM, data conference, computer on-line services, or other appropriate technology as approved by the Commission.

14. SCR 3.652(7) NEW LAWYER SKILLS PROGRAM

Section (7) of SCR 3.652 shall read:

- (7) Members required to complete the New Lawyer Skills Program pursuant to paragraph (5) of this Rule may, upon application to and approval by the Commission, be exempted from the requirement if the member is admitted to practice in another jurisdiction for a minimum of five years, and will certify such prior admission to the Commission, or if the member has attended a mandatory new lawyer training program of at least twelve and one-half (12.5) credits, including two (2) ethics credits, offered by the state bar association of another jurisdiction and approved by the director.

15. SCR 3.661 CONTINUING LEGAL EDUCATION REQUIREMENTS:
COMPLIANCE AND CERTIFICATION

SCR 3.661 shall read:

- (1) Each educational year, every person licensed to practice law in this Commonwealth, not specifically exempted pursuant to the provisions of Rule 3.666, shall complete and certify a minimum of twelve and one-half (12.5) credit hours in continuing legal education activities approved by the Commission, including a minimum of two (2) credit hours devoted to continuing legal education specifically addressing the topics of legal ethics, professional responsibility or professionalism. All continuing legal education activities must be completed not later than June 30 of each educational year.
- (2) Certification of completion of approved CLE activities must be received by the Director not later than August 10th immediately following the educational year in which the activity is completed. Certification shall be submitted to the Director by the sponsor of the accredited activity or by individual attorneys. Sponsors submitting certifications to the Director shall comply with all requirements set forth in SCR 3.665(6).
- (3) Programs or seminars or designated portions thereof devoted to legal ethics or professional responsibility include but are not limited to programs or seminars or designated portions thereof with instruction focusing on the Rules of Professional Conduct and/or the Rules of Professional Conduct as they are directly related to law firm management, malpractice avoidance, attorneys fees, legal ethics, and the duties of attorneys to the judicial system, public, clients and other attorneys.
- (4) Integration of legal ethics or professional responsibility issues into substantive law topics is encouraged, but shall not count toward the two (2) credit minimum annual requirement.
- (5) A member who accumulates an excess over the twelve and one-half (12.5) credit requirement may carry forward the excess credits into the two successive educational years for the purpose of satisfying the minimum requirement for those years. Carry forward is limited to a total of twenty-five (25) credits. All excess credits above a total of twenty-five (25) credits will remain on the member's records but may not be carried forward.
- (6) Carry-forward credits shall be allowed to satisfy the two (2) credit annual requirement for continuing legal education addressing the topics of legal ethics, professional responsibility and professionalism, and may be carried forward into the two years next succeeding the year in which the hours were earned. Carry forward for ethics, professional responsibility and professionalism is limited to a total of four (4) credits.

- (7) Certification may be submitted by sponsors or by individuals on approved Association forms, or uniform certificates, or any other format adopted by the Commission.
- (8) Compliance and certification requirements concerning the New Lawyer Skills Program are set forth at SCR 3.652(5) and (6).

16. SCR 3.662 QUALIFYING CONTINUING LEGAL EDUCATION
ACTIVITY AND STANDARDS

Section (2) of SCR 3.662 shall read:

- (2) The following categories of activities shall not qualify as a continuing legal education activity.
 - (a) Activities designed primarily for non-lawyers.
 - (b) In-house activity which has not been accredited at least thirty (30) days in advance.
 - (c) In-house activities for which less than half the instruction is provided by qualified persons outside the firm, department or agency, and which members of the Court, the Commission or Commission designee are prohibited from observing for compliance without charge of fees.
 - (d) Technological transmissions as set forth at SCR 3.662(1)(j) which do not meet the standards set forth in SCR 3.662 and which have not been submitted and accredited pursuant to SCR 3.665, or which are of such poor audio and video quality that participants cannot see or hear the content under reasonable circumstances.
 - (e) Home study or self-study which does not meet the standards set forth in SCR 3.662 and which has not been submitted and accredited pursuant to SCR 3.665.
 - (f) Bar review courses taken in preparation for bar examinations for admission to the highest court in a state or jurisdiction.
 - (g) Correspondence classes.
 - (h) Any activity completed prior to admission to practice in Kentucky except the program required pursuant to SCR 3.661(9) and 3.652(5).
 - (i) Undergraduate law or law-related classes.

- (j) Programs taken in preparation for licensure exams for non-lawyer professionals.
- (k) Business meetings or committee meetings of legal and law-related associations.

17. SCR 3.665(6)(f) PROCEDURE FOR ACCREDITATION OF CONTINUING LEGAL EDUCATION ACTIVITIES AND OBLIGATIONS OF SPONSORS

New subsection (f) of section (6) of SCR 3.665 shall read:

- (f) Sponsors may submit member activity certifications to the Director as required by SCR 3.661(2), via electronic means so long as the sponsor maintains the member's original certification, or copy thereof, of the completion of the activity on file for two (2) subsequent educational years following the year in which the activity was completed.

18. SCR 3.675(3) CONTINUING LEGAL EDUCATION REQUIREMENTS FOR RESTORATION OR REINSTATEMENT TO MEMBERSHIP; PROCEDURES

Section (3) of SCR 3.675 shall read:

- (3) The requirements for completion of continuing legal education as a condition to restoration or reinstatement as set forth above may only be satisfied with credits earned in the current educational year during which the application is submitted and the preceding two educational years. Credits so earned shall be applicable to requirements imposed by the Commission upon application or other actions undertaken in pursuit of restoration or reinstatement.

KENTUCKY LAWYER ASSISTANCE PROGRAM (KYLAP)

19. SCR 3.900 Definitions

New rule SCR 3.900 shall read:

As used in SCR 3.900 through SCR 3.980:

- (1) "Impairment" means and includes any mental, psychological or emotional condition that impairs or may foreseeably impair a person's ability to practice law or serve on the bench. Impairment may result from addiction

to intoxicants or drugs, chemical dependency, substance abuse, mental disease, mental disorder or defect, or psychological or emotional illness.

- (2) "The Kentucky legal community" means and includes (a) all members of the Kentucky Bar Association, including judges; (b) all applicants for admission to the practice of law in Kentucky; (c) all students enrolled at law schools in the Commonwealth; and (d) all members of the Association who have been suspended from the practice of law pursuant to the Rules of the Supreme Court.

20. SCR 3.910 Kentucky Lawyer Assistance Program (KYLAP)

New rule SCR 3.910 shall read:

- (1) There is hereby established a state-wide program to be called the Kentucky Lawyer Assistance Program (or "KYLAP"), which shall be operated by the Association in accordance with these Rules. It shall be the mission and purpose of KYLAP to address impairment issues within the Kentucky legal community in a manner that serves and promotes the general mission and purpose of the Association as set forth in SCR 3.025.
- (2) KYLAP shall offer certain types of assistance as described in this Rule to members of the Kentucky legal community who suffer from actual or potential impairment, and may proceed to provide such assistance to any member of the said community as requested or authorized. The types of assistance offered and provided by KYLAP in a particular case may include lay counseling and encouragement; assisting, planning and execution of interventions; providing information about treatment alternatives; monitoring progress of recovery from impairment, which may include assistance in arranging, scheduling and tracking attendance at recovery programs, appointments with counselors, therapists and medical care providers and compliance with alcohol or drug screens; monitoring compliance with voluntary or involuntary treatment or recovery programs, which may include documentation and reports concerning compliance or non-compliance; obtaining authorizations in conformity with federal and state law; and other related tasks that may assist a member of the said community in addressing an actual or potential impairment; provided, however, that KYLAP shall perform the aforesaid types of assistance in such a manner that KYLAP's staff does not render legal or medical advice and does not engage in any activity which constitutes the practice of law or medicine.
- (3) KYLAP shall develop and present educational programs for the Kentucky legal community regarding issues of impairment and shall pursue other

appropriate opportunities to increase awareness and understanding of such matters and cultivate an environment in which issues of impairment are properly addressed.

- (4) KYLAP shall serve as a resource within the Association with respect to matters of impairment, so that all functions and activities of the Association may benefit from KYLAP's information and expertise in matters of impairment.
- (5) KYLAP may engage in other activities consistent with these Rules and as authorized by the operating policies and procedures adopted by the KYLAP Commission.
- (6) KYLAP shall perform all of the aforementioned duties in a manner consistent with the confidentiality provisions of Rule 3.990.
- (7) KYLAP shall be funded from the annual dues collected by the Association pursuant to these Rules. KYLAP may also charge reasonable and appropriate fees for services rendered and accept monetary gifts in support of its activities, to the extent authorized by the KYLAP Commission and approved by the Board.

21. SCR 3.920 Kentucky Lawyer Assistance Program Commission
(KYLAP Commission)

New rule SCR 3.920 shall read:

- (1) The Board of Governors shall appoint a Commission to be called the Kentucky Lawyer Assistance Program Commission or "KYLAP Commission", which shall have general responsibility for the administration of KYLAP in accordance with these Rules.
- (2) The Commission shall consist of fifteen (15) persons, as follows: (a) two members of the Board of Governors; (b) an active member of the Association (either a lawyer or judge) from each of the seven Supreme Court Districts; (c) two other active members of the Association (either lawyers or judges); and (d) four (4) citizens of the Commonwealth who are not members of the Kentucky legal community. The Board shall appoint persons who have a demonstrated interest in issues of impairment and shall also endeavor to make appointments which create a diversity of knowledge and life experience within the Commission's membership.

- (3) Each member of the Commission shall be appointed for a period of four (4) years. However, in order to achieve staggered terms, the initial members of the Commission shall be appointed as follows:
- (a) Five of the Commission members who are lawyers or judges shall be appointed for two-year terms;
 - (b) Four of the Commission members who are lawyers or judges shall be appointed for three-year terms;
 - (c) Two of the Commission members who are lawyers or judges shall be appointed for four-year terms;
 - (d) Two of the Commission members who are not members of the Kentucky legal community shall be appointed for three-year terms; and
 - (e) Two of the Commission members who are not members of the Kentucky legal community shall be appointed for four-year terms.

Thereafter, when any vacancy occurs in the membership of the Commission, that vacancy shall be filled by appointment by the Board of Governors. When a vacancy occurs prior to the expiration of a member's term, the new member shall be appointed for the remainder of the unexpired term. When a vacancy occurs because of the expiration of a term, the new member shall be appointed for a four-year term.

- (4) The Commission shall have a Chair and a Vice-Chair. The Chair shall be appointed annually by the Board of Governors with input from the Commission and the KYLAP Director. The Vice-Chair shall be elected annually by the members of the Commission.
- (5) The Commission shall meet quarterly or upon call of the Chair or upon the request of five (5) or more members. A member's failure to attend three (3) consecutive meetings will automatically result in the vacancy of that member's position on the Commission.
- (6) The Commission shall have general responsibility for the administration of KYLAP in accordance with these Rules. In discharging its responsibility KYLAP shall have the authority to:
 - (a) Adopt operating policies and procedures as necessary and appropriate to implement these Rules and administer KYLAP, provided that, before such policies and procedures are

implemented, they shall receive approval of the Board; and

- (b) Make reports to the Board and Court annually or as otherwise required, provided that such reports shall be of a statistical and summary nature and shall not compromise the confidentiality of any referral under SCR 3.950 or any assignment under SCR 3.960.

22. SCR 3.930 KYLAP Program Director and Staff

New rule SCR 3.930 shall read:

The Board of Governors, through the Executive Director of the Association, shall appoint a KYLAP Program Director and sufficient staff to provide administrative support for the KYLAP Commission and the KYLAP program. The Program Director shall be responsible for the administration of KYLAP.

23. SCR 3.940 KYLAP Volunteer Counselors

New rule SCR 3.940 shall read:

KYLAP may enlist volunteer counselors to assist KYLAP in discharging KYLAP's duties under these Rules. Such volunteer counselors shall be subject to all provisions of these Rules including the provisions of SCR 3.910(2) limiting the types of assistance provided by KYLAP and the confidentiality requirements of SCR 3.990.

24. SCR 3.950 Self-Referrals

New rule SCR 3.950 shall read:

Any member of the Kentucky legal community may contact KYLAP to obtain information about KYLAP's services or to request assistance from KYLAP regarding an actual or potential impairment. Any such communication with KYLAP shall be confidential in nature and shall be held in strict confidence by KYLAP's staff and by all other persons involved in the implementation and delivery of KYLAP's services. Upon receiving any such inquiry, KYLAP may offer assistance of the nature described in Rule 3.910(2) as appropriate to the person's situation and circumstances, and may proceed to provide such assistance as authorized by that person.

25. SCR 3.960 Third Party Referrals

New rule SCR 3.960 shall read:

- (1) Any person may contact KYLAP and request or suggest that KYLAP offer assistance to a member of the Kentucky legal community who is suffering or may be suffering from an actual or potential impairment.
- (2) When a person contacts KYLAP pursuant to this Rule, his or her communication with KYLAP shall be confidential in nature and shall be held in strict confidence by KYLAP's staff and by all other persons involved in the implementation and delivery of KYLAP's services. Further, if KYLAP proceeds to communicate with the member of the Kentucky legal community who is the subject matter of the contact, KYLAP shall not disclose any information about its communications with the person who made the third-party referral, except as authorized by that person.
- (3) Any person who contacts KYLAP pursuant to this Rule shall be immune from any liability to the person who is the subject matter of the contact, or to any other person, by reason of contacting KYLAP.

26. SCR 3.970 Agency Referrals

New rule SCR 3.970 shall read:

- (1) A member of the Kentucky legal community who is the subject of a pending admission or disciplinary proceeding before an agency of the Supreme Court of Kentucky may authorize that agency to make a confidential request for assistance from KYLAP in evaluating or addressing any actual or potential impairment that may be relevant to the issues which the agency is charged with considering in the proceeding. In particular:
 - (a) A member of the Kentucky legal community who is the subject of an application for admission, restoration or reinstatement to the practice of law in the Commonwealth may authorize the Office of Bar Admissions to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to the OBA's consideration or disposition of the application for admission, restoration or reinstatement.
 - (b) A member or former member of the Association who is the subject of a disciplinary complaint or investigation pending before the Inquiry Commission may authorize that Commission to

communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to that Commission's consideration or disposition of that complaint or investigation.

- (c) A member or former member of the Association who is the subject of an investigation or prosecution by the Office of Bar Counsel may authorize OBC to communicate in confidence with KYLAP for the purpose of requesting assistance from KYLAP in evaluating and addressing any actual or potential impairment that may be relevant to OBC's recommended disposition of that investigation or prosecution.
- (2) Before an agency of the Court makes any contact with KYLAP pursuant to paragraph (1) of this Rule, it shall obtain a written authorization from the person who is the subject of the proposed assistance clearly evidencing the fact that such person has authorized the agency to communicate with KYLAP for one or more purposes set forth in paragraph (1).
- (3) Upon receiving any request for assistance from an agency of the Court pursuant to paragraph (1) of this Rule, KYLAP shall satisfy itself: (a) that the person who is the subject of the proposed assistance has authorized the agency to communicate with KYLAP, in accordance with paragraphs (1) and (2) of this Rule; and (b) that the requested assistance falls within the scope of KYLAP's mission and services as set forth in Rule 3.910. KYLAP shall not take any other steps in response to the request until it has satisfied itself of these two threshold matters.
- (4) After satisfying itself of the threshold matters set forth in paragraph (3), KYLAP shall determine whether it is able to provide any assistance to the requesting agency and respond appropriately to that agency. KYLAP is not obligated by these Rules to accept any request for assistance or become involved in any proceeding before any agency of the Court, and shall do so only when it determines that it is able to provide assistance in accordance with these Rules.
- (5) Before providing any assistance pursuant to a request from an agency of the Court, KYLAP shall obtain a written authorization, waiver and release from the person who is the subject of the proposed assistance, in which that person authorizes KYLAP to:
 - (a) provide appropriate status reports to the requesting agency, and to any other appropriate agencies of the Court, regarding any aspect of the assistance provided by KYLAP after the date KYLAP has

accepted the request for assistance, including, without limitation, (i) any assessment or diagnosis of the person's condition rendered after the date KYLAP has accepted the request for assistance, (ii) the person's progress in addressing the actual or potential impairment after the date KYLAP has accepted the request for assistance, and (iii) the person's compliance or non-compliance with any terms or conditions imposed by the Court, any agency of the Court, or KYLAP, after the date KYLAP has accepted the request for assistance;

- (b) disclose to the requesting agency, and to any other appropriate agencies of the Court, any information gathered or received by KYLAP after the date KYLAP has accepted the request for assistance, for use as evidence in any admission, disciplinary, restoration or reinstatement proceeding, subject to the rules of evidence and procedure in that proceeding; and
- (c) provide testimony in any admission, disciplinary, restoration or reinstatement proceeding regarding assistance provided by KYLAP after the date KYLAP has accepted the request for assistance, subject to the rules of evidence and procedure in that proceeding.

27. SCR 3.980 Supreme Court Assignments to KYLAP

New rule SCR 3.980 shall read:

- (1) The Supreme Court may assign appropriate tasks and responsibilities to KYLAP relating to the evaluation of an impairment or the monitoring of a person's progress toward recovery from impairment as part of the Court's final disposition of any application for admission to the bar, petition for temporary suspension, charge of professional misconduct or application for restoration or reinstatement, where an issue of impairment has been raised in the proceeding, provided that in no event shall KYLAP become involved in any proceeding prior to the final disposition of that proceeding without the consent of the lawyer.
- (2) The Board of Governors may recommend that the Court assign appropriate tasks and responsibilities to KYLAP as described in paragraph (1) of this Rule as part of the Board's recommendation to the Court in any disciplinary, restoration or reinstatement proceeding, where an issue of impairment has been raised in the proceeding.
- (3) When KYLAP receives a matter by assignment from the Court pursuant to paragraph (1) of this Rule:

- (a) KYLAP shall proceed to provide assistance of the nature described in Rule 3.910(2) in accordance with the terms of the Court's order, and may impose additional requirements on the person who is the subject of the assignment as necessary to perform the assignment;
- (b) KYLAP may provide reports to the Court, and to one or more agencies of the Court, as authorized or required by the terms of the Court's order;
- (c) Any information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule may be used as evidence in any admission, disciplinary, restoration or reinstatement proceeding regarding the person who is the subject of the assignment, subject to the rules of evidence and procedure in that proceeding; and
- (d) One or more representatives of KYLAP may be called as witnesses in any admission, disciplinary, restoration or reinstatement proceeding for the purpose of testifying about information gathered or received by KYLAP after the date of the Court's order and in the course of discharging the tasks and responsibilities assigned by the Court as part of a final disposition under paragraph (1) of this Rule, subject to the rules of evidence and procedure in that proceeding.

28. SCR 3.990 Confidentiality.

New rule SCR 3.990 shall read:

- (1) All communications to KYLAP and all information gathered, records maintained and actions taken by KYLAP shall be confidential, shall be kept in strict confidence by KYLAP's staff and volunteers, shall not be disclosed by KYLAP to any person or entity, including any agency of the Court and any department of the Association, and shall be excluded as evidence in any proceeding before the Board of Governors or the Office of Bar Admissions, except that:
 - (a) if the person who is the subject of KYLAP's assistance has provided a written release authorizing disclosure of communications to KYLAP or information gathered, records maintained or actions taken by KYLAP, KYLAP may disclose such information in strict accordance with the terms and conditions of that written release;

- (b) if the matter was assigned to KYLAP by the Court pursuant to paragraph SCR 3.980, KYLAP may issue reports, disclose information and provide testimony as set forth in paragraph (3) of that Rule, and this Rule 3.990 shall not be construed as a basis for excluding otherwise admissible evidence from any admission, disciplinary, restoration or reinstatement proceeding; and
 - (c) if KYLAP provided assistance pursuant to an agency referral under SCR 3.970, KYLAP may issue reports, disclose information and provide testimony as set forth in paragraph (5) of that Rule, and this Rule 3.990 shall not be construed as a basis for excluding otherwise admissible evidence from any admission, disciplinary, restoration or reinstatement proceeding.
- (2) The foregoing requirement of confidentiality shall apply to all members of the KYLAP Commission, all KYLAP staff members and volunteers, all employees of the Association, all volunteer counselors, all persons who provide information or other assistance to KYLAP in connection with any referral or assignment, and all other persons who participate in the performance or delivery of KYLAP's services.

29. SCR 3.995 Immunity.

New rule SCR 3.995 shall read:

The duties imposed by these Rules are duties owed to the Supreme Court, not to any other person or entity. Nothing in these Rules shall be construed as creating any cause of action or right of suit against any person or entity.

30. SCR 4.310(2), (3), (4) Judicial Ethics Committee and Opinions.

Sections (2), (3), and (4) of SCR 4.310 shall read:

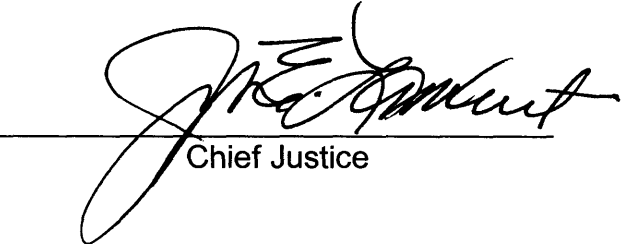
- (2) Opinions as to the propriety of any act or conduct and the construction or application of any canon shall be provided by the committee upon request from any justice, judge, trial commissioner or by any judicial candidate. If the committee finds the question of limited significance, it shall provide an informal opinion to the questioner. If, however, it finds the question of sufficient general interest and importance, it shall render a formal opinion, in which event it shall cause the opinion to be published in complete or synopsis form. Likewise, the committee may issue formal opinions on its own motion under such circumstances as it finds appropriate.
- (3) Both formal and informal opinions shall be advisory only; however, the

commission and the Supreme Court shall consider reliance by a justice, judge, trial commissioner or by any judicial candidate upon the ethics committee opinion.

- (4) Any person affected by a formal opinion of the ethics committee may obtain a review thereof by the Supreme Court by filing with the clerk of that court within 30 days after the end of the month in which it was published a motion for review stating the grounds upon which the movant is dissatisfied with the opinion. The motion shall be accompanied by a copy of the opinion or synopsis as published and shall be served upon the ethics committee and, if the movant is someone other than the party who initiated the request for the opinion, upon the initiating justice, judge or commissioner. The filing fee for docketing such motion shall be as provided by Civil Rule 76.42(1) for original actions in the Supreme Court. Notwithstanding the provisions of this subsection of the rule, the Supreme Court on its own initiative may review a judicial ethics opinion at any time.

All concur.

ENTERED: October 2, 2003.



Chief Justice